IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE ELEVENTH DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE C.V.RAMULU

WRIT PETITION NO.4791 of 1998

Between:

K.Sinivasa rao S/o.Narsimha Rao
R/o.Avanigadda , Krishna Dist

..... PETITIONER

AND

1 The Depot Manager,
APSRTC , Vuyyuru Depot Vuyyur , Krishna Dist
2 Regional Manager
ASPRTC , Vijayawada region, Vijayawada , Krishna District.
3 Managing Director
APSRTC , Musheerabad, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court will be pleased to issue an order, direction or writ particularly one in the nature of Writ of Mandamus or any other appropriate writ declaring the office order No.P2/1(82) 92-VYR dated: 1-6-95 imposing the punishment of withholding an annual increment for a period of one year as illegal and arbitrary and consequently set aside the same; 2) declaring the proceedings No.P2/1(82)/92-VYR. dated 4-7-95 as modified by corrigendum vide letter No.P2/1(82)/92-VYR-D.Dis. dated18-7-95 treating the period of suspension as not on duty as illegal and arbitrary; and consequently set aside the proceedings and direct the respondent corporation to treat the period of suspension as on duty for the purpose of pay and allowance and pass such other orders.

Counsel for the Petitioner:MR.G.VIDYASAGAR

Counsel for the Respondent Nos.1 to 3: MR.V.V.V.RAO

The Court made the following Order:

This writ petition is filed challenging the Order No. P2/1(82)/92-VYR, dated 1.6.1995, imposing the punishment of withholding of an annual increment for a period of one year and the Order No.P2/1(82)/92-VYR, dated 4.7.1995 as modified in Order No. P2/1(82)/92-VYR, dated 18.7.1995 as arbitrary and illegal.

In the Order dated 1.6.1995, petitioner has been imposed with a punishment of deferment of one annual increment without cumulative effect. In the Order dated 4.7.1995, the suspension of the petitioner from 16.12.1992 till the date of reporting, i.e. 13.4.1995, was treated as not on duty. However, the same was modified by way of Corrigendum dated 18.7.1995 wherein it was stated that the period of suspension from 27.11.1992 till 13.4.1995 be treated as not on duty instead of from 16.12.1992 to 13.4.1995, as stated in the earlier order dated 4.7.1995.

The petitioner, while working as a Mechanic in A.P.S.R.T.C., at Vuyyuru, on 26.11.1992, had suffered severe body pains and as such applied leave on 27.11.1992 and also availed weekly off on 28.11.1992. The leave for 27.11.1992 was granted. He left the headquarters and proceeded to Machilipatnam on the intervening night of 26/27.11.1992 at about 23.00 hrs., since he received information that his father was seriously ill. By the time, he went to his place, his father was recovering. Then the next day, i.e, on 27.11.1992, when he was proceeding to the hospital, he was arrested by the Chilakalapudi police and was sent for judicial custody since he was involved in a crime arising outside his employment. On the basis of information received from the police, petitioner was kept under suspension since he was in judicial custody for more than 48 hours and charge sheet was also issued to him for having failed to attend to his duties from 29.11.1992 without prior sanction of leave, causing inconvenience to the depot and for having left the headquarters without prior sanction of the authorities and also for having failed to inform the fact of his arrest by the police on 27.11.1992. Thereafter, petitioner

submitted his explanation at the earliest point of time stating that when he was arrested by the police on 27.11.1992, he had no opportunity to inform the same since he was in the police custody. However, the respondent-management conducted a detailed enquiry into the matter and finally issued proceedings dated 1.6.1995, imposing the punishment of stoppage of one annual increment without cumulative effect for the mis-conduct charged and proved against the petitioner. In so far as regularizing the suspension period from 16.12.1992 to 13.4.1995 is concerned, the same was treated as not on duty and was slightly modified as to the dates by the order dated 18.7.1995.

The punishment imposed, i.e., stoppage of one annual increment without cumulative effect, cannot be said to be a punishment, which is either disproportionate or otherwise illegal for the mis-conduct proved.

However, in so far as treating the entire period of suspension not on duty for a trivial charge of this nature can be said to be disproportionate to that of the mis-conduct proved. According to the petitioner, it is double punishment.

Admittedly, the crime arose outside the employment. Petitioner applied for leave on 27.11.1992 and also availed weekly off on 28.11.1992. The leave for 27.11.1992 was sanctioned. However, the circumstances under which the petitioner was placed were beyond his control. May be that the petitioner was involved in a criminal case and was arrested, but, petitioner, at the earliest point of time, submitted his explanation stating that he was arrested on 27.11.1992 by the police at Chilakalapudi and was sent for judicial custody.

Therefore, the punishment of treating the period of suspension as not on duty would be very harsh having regard to the imposition of punishment of stoppage of one increment without cumulative effect, though the respondents have power under Section 21 of A.P.S.R.T.C. Employees (CCA) Regulations, 1967 to impose such punishment. Therefore, I am of the view that the punishment of treating the period of suspension from 27.11.1992 to 13.4.1995 as not on duty is disproportionate to that of the mis-conduct proved against the petitioner. At the most, petitioner, may not be entitled for full wages for the said period. Therefore, the order of suspension treating the period as not on duty dated 4.7.1995 and the modified order dated 18.7.1995 are liable to be set aside. Accordingly, they are set aside. Thus, the period of suspension shall be treated as on duty, but, without any back wages, but with

nominal attendant benefits. However, in so far as the punishment of stoppage of increment for one year imposed vide order dated 1.6.1995 is concerned, it does not call for any interference at the hands of this Court.

The writ petition is allowed to the extent indicated above. No costs.

11th November, 2004

pnb

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this Thursday, the Eleventh day of November, Two Thousand and Four.

To

1 The Depot Manager,
APSRTC , Vuyyuru Depot Vuyyur , Krishna Dist
2 The Regional Manager
ASPRTC , Vijayawada region, Vijayawada , Krishna District.
3 The Managing Director
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